

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34093

STATE OF IDAHO,)	2008 Unpublished Opinion No. 528
)	
Plaintiff-Respondent,)	Filed: June 30, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
HAL LEE WEST,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Order denying demand for dismissal and motion for default judgment, affirmed.

Molly J. Huskey, State Appellate Public Defender; Erik R. Lehtinen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ann Wilkinson, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Hal Lee West appeals from the district court's order denying his demand for dismissal of the criminal charges against him and his motion for default judgment. Because the district court did not have jurisdiction to dismiss the charges against West, we affirm.

I.

BACKGROUND

In 2002, West pled guilty to grand theft and received a unified sentence of seven years, with two years determinate. The court also ordered that West pay restitution in the amount of \$49,502.35, a \$500 fine, a \$500 public defender fee, court costs of \$38.50, and two surcharges in the amount of \$65. West did not appeal from his judgment of conviction.

On June 22, 2004, more than two years after he was sentenced, West filed an Idaho Criminal Rule 35 motion for correction or reduction of sentence. West argued that his sentence was illegal because the district court had relied on erroneous information in his presentence

investigation report. The district court, however, found that West's motion did not allege that his sentence was illegal; rather it was a plea for leniency. Motions requesting a reduction in sentence must be filed within 120 days of the filing of the judgment of conviction. I.C.R. 35. The court thereby concluded that West's Rule 35 motion was untimely, resulting in a denial. West appealed the denial of his Rule 35 motion; however, this Court affirmed the district court's denial in an unpublished opinion, *State v. West*, Docket No. 30980 (Ct. App. May 5, 2005).

On February 14, 2006, the district court amended the order of restitution to update the payment address for one of the victims. On November 15, 2006, West filed a "Notice and Demand for Dismissal Court Unable to Affect Remedy." In his notice and demand, West argued that because the fines and judgment are ordered to be paid in dollars, which West does not have, the district court lacks the ability to enforce its judgment. West concluded that the criminal charges against him ought to be dismissed.

On January 25, 2007, West filed a motion for default judgment, pursuant to Idaho Rule of Civil Procedure 55(b)(2), arguing that his demand for dismissal should be granted because the state failed to timely respond to it.

One month later, the district court denied West's demand for dismissal and motion for default judgment. West appeals.

II. ANALYSIS

West's only argument on appeal is that because he cannot pay the fines and restitution, the criminal charges against him are required to be dismissed. West, however, concedes that the district court lacks jurisdiction to dismiss the criminal charges against him.

Whether a court lacks jurisdiction is a question of law that may be raised at any time, *Pizzuto v. State*, 127 Idaho 469, 471, 903 P.2d 58, 60 (1995), and over which we exercise free review, *State v. Barros*, 131 Idaho 379, 381, 957 P.2d 1095, 1097 (1998).

A court does not retain jurisdiction over a case indefinitely. *Boyd v. Steele*, 6 Idaho 625, 59 P. 21 (1899). The Idaho Supreme Court noted: "Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." *State v. Jakoski*, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003).

A defendant may appeal a final judgment of conviction within 42 days from the filed judgment. Idaho Appellate Rules 11(c)(1), 14(a). A defendant may also request relief from an order of restitution within 42 days from the entry of the order. Idaho Code Section 19-5304(10). West did not appeal from the judgment of conviction nor did he request relief from the order of restitution. Clearly, the district court lost jurisdiction to amend or set aside the judgment when West let the 42 days to appeal his conviction or request relief from the order of restitution pass. Therefore, the district court did not have jurisdiction to grant West's demand for dismissal.

Because we conclude that the district court did not have jurisdiction to grant West's demand for dismissal, we need not address West's argument pertaining to his ability to pay fines and restitution. Accordingly, we affirm the district court's order denying West's demand for dismissal and his motion for default judgment.